



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/018,676	12/24/2002	Takashima Mitsuru	7266/66308-RDK	2637

7590 11/04/2005

Robert D Katz
Cooper & Dunham
1185 Avenue of the Americas
New York, NY 10036

EXAMINER

MARMOR II, CHARLES ALAN

ART UNIT	PAPER NUMBER
----------	--------------

3736

DATE MAILED: 11/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/018,676

Applicant(s)

MITSURU, TAKASHIMA

Examiner

Charles A. Marmor, II

Art Unit

3736

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 September 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-5, 14 and 15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-5, 14 and 15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 June 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This Office Action is responsive to the Amendment filed September 23, 2005. The Examiner acknowledges the amendments to claims 2 and 5. Claims 2-5, 14 and 15 are pending.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 2-5, 14 and 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Applicant has amended claims 2 and 5 via the Amendment of September 23, 2005 to recite the limitation "a plurality of closed air pressure sensors each including one or more of a non-directional microphone *or* a pressure sensor" at lines 6-7 and 5-6, respectively. The use of alternative language in this limitation suggests that each closed air pressure sensor of the apparatus must include at least one non-directional microphone *or* at least one pressure sensor; however, the limitation also implies that the apparatus may not include both non-directional microphones and pressure sensors. Therefore, the limitations positively reciting both non-directional microphones and pressure sensors at lines 13-14 of claim 2, line 2 of claim 3, line 2 of claim 4, lines 12-13 of claim 5, line 2 of claim 14 and line 2 of claim 15 are not necessarily accurate. The Examiner respectfully suggests amending the limitation "by the respective non-directional microphones and by the pressure sensors" at lines 13-14 of claim 2 and lines 12-13 of

Art Unit: 3736

claim 5 to recite --by the respective closed air pressure sensors-- in an effort to obviate this rejection. Regarding claims 3, 4, 14 and 15, the Examiner respectfully suggests amending the limitation “non-directional microphones and” at line 2 of each claim to recite --closed air-- in an effort to obviate this rejection.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 2-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Scanlon ('005). Scanlon teaches acoustic monitoring systems for collecting biomedical information. The systems (12) include a plurality of closed compartments (11) defined by partitions (22). The systems and partitions are made of an airtight, flexible material (see at least column 7, lines 51-54). Each compartment has a variable internal volume and is made of rubber or plastic materials (col. 4, lines 57-60). Each compartment is filled with a fluid and a spring member in the form of foam, suspension structures or partitions. Air is a type of fluid. A closed air type sound transducer (14) in the form of a microphone (col. 1, line 66 - col. 2, line 2) or pressure sensor (col. 4, lines 40-41) detects and converts fluid pressure in each of the compartments into an electric signal. The apparatus can be built into a crib, seat or gurney where the body-contacting surface of the crib, seat or gurney forms a plate-shaped member on the plurality of closed compartments, which may be spaced apart or adjacent to one another. The sound transducer (14)

Art Unit: 3736

can include a sound transducer in each of the closed compartments (fig. 3) or can be mounted at an end portion of a hose (16) connected to the closed compartments (fig. 2). The air pressures within the closed compartments, when a living body is placed on the closed compartments, are detected by the sound sensor to measure biomedical information such as breathing, heart rate and movement of the living body (col. 2, lines 24-27).

Allowable Subject Matter

6. Claims 5, 14 and 15 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

7. The following is a statement of reasons for the indication of allowable subject matter:

No prior art of record teach or fairly suggest a biomedical information collection apparatus, as claimed by Applicant, where each of the closed compartments includes a microscopic pinhole to establish an air leak countermeasure to minimize an influence on the sound sensors.

Response to Arguments

8. Applicant's arguments with respect to the rejections under 35 U.S.C. 112, second paragraph, filed June 10, 2005 have been fully considered but they are not fully persuasive.

While Applicant's amendments have obviated several of the indefinite limitations, Applicant's amendment of September 23, 2005 has raised new issues with respect to definiteness as

discussed hereinabove. In view of the foregoing, the rejection of claims 2-5, 14 and 15 under 35 U.S.C. 112, second paragraph, has been maintained.

9. Applicant's arguments filed June 10, 2005 with respect to the rejection of claims 1-3 under 35 U.S.C. 102(b) as anticipated by Scalton have been fully considered but they are not persuasive. Applicant contends that discloses a pad including a sensor, which is soft, pliable, and fluid filled, and can be used to monitor patient data such as breathing, head rate, and the like. Applicant further argues that Scanlon fails to disclose a plate on the closed compartments such as Applicant's plate that is a flat, thin, rigid body, as illustrated in the specification and defined in claims 2-4.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the plate) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). The Examiner respectfully submits that the claims do not require a "plate." The claims instead require a "*plate-shaped* member." The Examiner respectfully submits that the term "plate-shaped member" does not impart any structure to the member absent any special definition for the term set forth in the detailed description. The member placed on the closed compartments only must be "plate-shaped" in order to meet the limitations of the claims. The word "plate" is defined by *The American Heritage® Dictionary of the English Language, Third Edition* (1992) as "a smooth, flat, relatively thin, rigid body of uniform thickness." Since the member is described as "plate-

Art Unit: 3736

shaped,” a element must only have the shape of a plate, i.e. be smooth, flat and relatively thin to meet the claim limitation. The claimed member does not necessarily have to be rigid since rigidity is not a characteristic used to define a shape, and the limitation does not recite a rigid plate member. Therefore, the body-contacting surface of the crib, seat or gurney of Scanlon would meet the structural limitations of a *plate-shaped* member. In view of the foregoing, rejection of claims 2-4 under 35 U.S.C. 102(b) as being anticipated by Scanlon has been maintained.

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

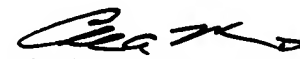
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Art Unit: 3736

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles A. Marmor, II whose telephone number is (571) 272-4730. The examiner can normally be reached on M-TH (7:00-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571) 272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Charles A. Marmor, II
Primary Examiner
Art Unit 3736

cam
November 1, 2005